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No. 329

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

HUMBLE PIPE LINE COMPANY
Petitioner,

vs.

W. E. WAGGONNER, Sheriff and Ex-Officio Tax Collector of Bossier Parish, Louisiana,
Respondent

On Writ of Certiorari to the Court of Appeal, Second Circuit, State of Louisiana

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REPLY MEMORANDUM FOR HUMBLE PIPE LINE COMPANY.

LEON O'QUIN,
Fifth Floor, First National Bank Building,
Shreveport, Louisiana,
Attorney for Petitioner.

THOMAS A. HARRELL,
Fifth Floor, First National Bank Building,
Shreveport, Louisiana,
Of Counsel.

LECOMTE, SHREVEPORT, LOUISIANA

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REPLY MEMORANDUM FOR HUMBLE PIPE LINE COMPANY.

Upon acquisition of the lands of Barksdale Air Force Base by the United States, exclusive legislative jurisdiction over that enclave then vested in Congress under the provisions of Art. 1, § 8, cl. 17, of the Constitution of the United States, and under Act No. 12 of the Legislature of Louisiana for the year 1892 such jurisdiction was specially ceded to the United States.

In *Kohl v. United States*, 91 U.S. 367, 23 L. ed. 449, this Court, in considering the authority of the United States to acquire lands for governmental purposes by con-

demnation in the several states, referred to an act of Congress of March 2, 1872. which gave authority to the Secretary of the Treasury to purchase a suitable site in Cincinnati for the erection of a building for the accommodation of the United States courts, etc., saying:

> "The authority here given was to purchase. If that were all, it might be doubted whether the right of eminent domain was intended to be invoked. It is true, the words 'to purchase' might be construed as including the power to acquire by condemnation; for, technically, purchase includes all modes of acquisition other than that of descent. But generally in statutes as in common use, the word is employed in a sense not technical, only as *meaning acquisition by contract between the parties, without governmental interference.*" (emphasis supplied)

91 U.S., p. 374.

In *Ft. Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 29 L. ed. 264, this Court quoted with approval from *People v. Godfrey*, 17 Johns 225, in which reference was made to the question of exclusive jurisdiction of the United States over Ft. Niagara, saying:

> "'If the United States,' the court added, 'had the right of exclusive legislation over the fortress of Niagara, they would have also exclusive jurisdiction; but we are of opinion that the right of exclusive legislation within the territorial limits of any state can be acquired by the United States only in the mode pointed out in the Constitution; by purchase, by consent of the Legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful

buildings. *The essence of that provision is that the state shall freely cede the particular place to the United States for one of the specific and enumerated objects.*' " (emphasis supplied)

114 U.S., p. 538

In this case, the lands forming Barksdale Air Force Base were conveyed to the United States by the City of Shreveport[1] pursuant to State constitutional provisions (Art. 4, § 12)[2] permitting the municipality to acquire and transfer the same for use by the United States as an aviation field or Air Force base. The inducement or consideration for the conveyance was the Air Force establishment to be erected, for which purpose the acceptance of the conveyance was authorized by act of Congress prior to the execution of the conveyance, which was made with complete warranty of title and agreements of indemnity executed in compliance with the requirements of the duly authorized officers of the United States. (See R. p. 59, No. 354)

The conveyance made was executed pursuant to the contract between the City of Shreveport, acting in its proprietary capacity, and the United States, entered into with the express consent of the State particularly set forth in the State constitutional provision. The conveyance was

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(1) Conveyances were also made by the State of Louisiana and the Board of Commissioners of the Bossier Levee District, but those conveyances were merely supplemental or formal, relating principally to possible water bottoms in the area.

(2) See appendix to Petitioner's original brief, p. 26.

as much a purchase made by the United States with the express consent of the legislature of the State as if acquired from private interests for a specified montary consideration, and we submit that exclusive legislative jurisdiction over the property then vested in Congress pursuant to the provisions of Art. 1, § 8, cl. 17, of the Constitution of the United States.

In this connection, we quote the following extracts from the very exhaustive treatise contained in Part II of the Report of the Interdepartmental Committee For The Study of Jurisdiction Over Federal Areas Within The States (June 1957) relating to the construction of the term "purchase".

> "The term 'purchased' does, however, include acquisitions by means of condemnation proceedings, as well as acquisitions pursuant to negotiated agreements. See James v. Dravo Contracting Co., supra; Mason Co. v. Tax Comm'n, supra; Holt v. United States, 218 U.S. 245 (1910); Chaney v. Chaney, 53 N.M. 66, 201 P. 2d 782 (1949); Arledge v. Mabry, 52 N.M. 303, 197 P. 2d 884 (1948); People v. Collins, 105 Cal. 504, 39 Pac. 16, 17 (1895). The term also includes cessions of title by a State to the Federal Government. United States v. Tucker, 122 Fed. 518 (W.D. Ky., 1903). A conveyance of land to the United States for a consideration of $1 has likewise been regarded as a purchase within the meaning of clause 17. 39-Ops. A. G. 99 (1937).
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> . . . . . .
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> "Since acquisitions by condemnation are construed as purchases under article I, section 8, clause 17, of the Constitution, it seems that donations would also

be interpreted as purchases. See Pothier v. Rodman, 285 Fed. 632 (D.R.I., 1923), aff'd., 264 U.S. 399 (1924); question raised but decision based on other grounds in Mississippi River Fuel Corporation v. Fontenot, 234 F. 2d 898 (C.A. 5, 1956), cert. den., 352 U.S. 916".

Pages 68 and 69.

However, it seems unnecessary to determine the manner in which the exclusive jurisdiction of the United States was acquired, for if exclusive jurisdiction was not vested under the article of the Constitution, such jurisdiction was then ceded to the United States under Act No. 12 of the Legislature of Louisiana for the year 1892,(3) as admitted in respondent's brief, page 10, as follows:

"However, the consent of the State of Louisiana to the donations as contained in Act No. 12 of 1892, and as later amended by Act No. 31 of 1942 (embodied in the Louisiana Revised Statutes of 1950 as Title 52, § 1) ceded pursuant to its provisions exclusive legislative jurisdiction to the Federal government over the lands so acquired."

We have further noted from the Interdepartmental Report referred to that reservations in state statutes ceding jurisdiction have been strictly construed.

"State reservations of jurisdiction have presented few legal problems. In no instance has a State reservation of jurisdiction been invalidated, or its scope narrowed, on the ground that its effect was

(3) See appendix to Petitioner's original brief, p. 29.

to enlarge the power of the State or to interfere with the functions of the Federal Government. Instead, the reported cases involving such reservations have presented questions concerning the scope of the reservations actually made. Thus, in Collins v. Yosemite Park Co., 304 U.S. 518 (1938), it was held that a reservation by a State of the right to tax the sale of liquor does not include the right to enforce the regulatory features of the State's alcoholic beverage control act in an area in which, except inter alia the right to tax, the entire jurisdiction of the State had been ceded to the Federal Government. Similarly, in Birmingham v. Thompson, 200 F. 2d 505 (C. A. 5, 1952), it was held that even though the State, in ceding jurisdiction to the Federal Government, reserved the right to tax persons in the area over which jurisdiction had been ceded, a city could not require the payment of a license fee by a contractor operating in the area where issuance of the license was coupled with a variety of regulatory provisions. The results reached in these two cases suggest that State statutes transferring jurisdiction will be construed strictly. Only those matters expressly mentioned as reserved will remain subject to the jurisdiction of the State."

Pages 188 and 189.

CONCLUSIONS

For the reasons stated herein and in the briefs for Petitioners and for the United States as amicus curiae, it is submitted that the judgment of the Court of Appeal,

Second Circuit, State of Louisiana, should be reversed with directions to grant the relief sought.

LEON O'QUIN,
Fifth Floor, First National Bank Building,
Shreveport, Louisiana,

Attorney for Petitioner.

THOMAS A. HARRELL,
Fifth Floor, First National Bank Building,
Shreveport, Louisiana,

Of Counsel.